

R. C. BEVERIDGE

IBLA 80-757

Decided September 30, 1980

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N-28879 as to certain lands within a reservoir right-of-way.

Affirmed as modified.

1. Oil and Gas Leases: Lands Subject To--Oil and Gas Leases: Rights-of-Way Leases

Lands under reservoir rights-of-way may be leased only under the authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). However, the language of the 1930 Act is construed to mean that it applies only to land actually within the limits of the right-of-way and that the lands in legal subdivisions, exclusive of the reservoir right-of-way may be leased under the Mineral Leasing Act of 1920, provided there are no justifiable reasons for refusing to lease them.

APPEARANCES: R. C. Beveridge, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

R. C. Beveridge appeals from the decision of June 4, 1980, wherein the Nevada State Office, Bureau of Land Management (BLM), rejected his noncompetitive oil and gas lease offer N-28879 filed pursuant to section 17, Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 226(c) (1976), as to 620 acres in secs. 22, 27, and 28, T. 30 N., R. 56 E., Mount Diablo meridian, Nevada, because the lands are included within a reservoir right-of-way and are leasable only under the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976).

Appellant contends his offer could be accepted with a stipulation that no development be allowed on or within the reservoir limits, alleging that such practice is commonly followed by BLM in other states, e.g., New Mexico. Appellant also argues that the reservoir right-of-way covers less than 200 acres so that rejection of his offer as to the remaining 420 acres is without legal basis.

The status plat for T. 30 N., R. 56 E. depicts a reservoir right-of-way, CC 04592, within secs. 22, 27, and 28. As appellant points out, the area included in the right-of-way is much less than the 620 acres rejected from the subject lease offer.

The argument that an oil and gas lease under section 226(c) could be issued for land within the right-of-way stipulations requiring nonuse is unacceptable. Lands under reservoir rights--of-way may be leased for oil and gas only pursuant to authority in the Act of May 21, 1930, supra, and only to the holder of the right-of-way or its assignee, or to an adjoining owner or his lessee under an agreement to pay compensatory royalty. Alice Hays, 36 IBLA 313 (1978); Republic Oil and Mining Co., 35 IBLA 212 (1978); A. A. McGregor, 18 IBLA 74 (1974); 43 CFR 3100.0 3(d)(1). It was thus proper for BLM to reject offer N-28879 to the extent of the actual conflict with the granted right-of-way, CC 04592.

The 1930 Act authorized the Secretary of the Interior "to lease deposits of oil and gas in or under lands embraced in railroad or other rights-of-way acquired under any law of the United States." This Board has construed that language to mean that the 1930 Act applies only to land actually within a reservoir right-of-way and that the remaining lands in the subdivision exclusive of the right-of-way may be leased under section 17 of the 1920 Act, supra, provided there is no compelling reason for refusing to lease them.

As a map delineating the area of a reservoir must be filed with BLM and approved by the Secretary of the Interior, the actual area of the reservoir within secs. 22, 27, and 28 may be easily computed by BLM. There appears to be no reason why the remaining parts of each subdivision invaded by the reservoir may not be leased. A. A. McGregor, supra. This case may be distinguished from Alice Hays, supra, where, after the reservoir land was eliminated, the offer embraced less than 640 acres altogether. The subject offer originally described 1,080 acres, an isolated parcel, and after deletion of the 200 or so acres within the reservoir, will still meet the "640-acre rule" set out at 43 CFR 3110.1 3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified, and the case is remanded to BLM for further appropriate action consistent with this opinion.

Douglas E. Henriques

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

